IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6809 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHANUBHAI KALIDAS PATEL

Versus

MANIBEN WD/O PRABHUBHAI RANCHHODBHAI

Appearance:

MR GR SHAIKH for Petitioners

MR I.M.PANDYA AGP for the Respondents.

NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. Mr.G. R. Shaikh, learned advocate appearing on behalf for the petitioner. Mr.Pandya, learned AGP appearing on behalf for the respondents. Though notices have been served to the respondent no.1, but no one

remains present on behalf of the respondent no.1

2. In the present petition, Rule has been issued by this Court on 12th September, 1990 and ad-interim relief in terms of para-9(B) has been granted by this Court.

3. The brief facts of the giving rise to this petition are as under:

The present petitioners are owners and occupants of Survey No.149, admeasuring 5 Acre - 33 Guntha of Vadod, Taluka Choryashi, District Surat. The said land was of the ownership and occupancy of respondent no.1 Maniben widow of Prabhubhai. The widow Maniben stood a surity i.e. a guarantor for one Shri Makanbhai Mavajibhai who had taken loan from Kudsad Vibha Multi Purpose Cooperative Society Limited of Karjan, Taluka Kamrej of District Surat. That the society took steps for the recovery of its dues under the Gujarat Cooperative Societies Act and ultimately a certificate under section 106 of the said Act was issued and consequent thereupon the Special Recovery Officer, Surat put the disputed land of the ownership and occupancy of Maniben for public auction. The public auction was held on 08/05/1979. The present petitioners were the highest bidders and their bid was Rs.66,000/- which was accepted and a certificate to that effect was issued by the Special Recovery Officer in favour of the present petitioners dated 08/05/79. The said certificate in respect of acceptance of the bid and the title of the present petitioners. The said certificate has been issued by the Special Recovery Officer dated 14th July, 1979 regarding the purchase in favour of the present petitioners. So there are two certificates issued by the Special Recovery Tribunal dated 8th June, 1979 and 14th July, 1979. In pursuance to these certificates, the possession was also handed over and delivered to the present petitioners on 23rd May, 1979. The possession receipt was also issued by the petitioners on 23rd May, 1979 and necessary entry in the Village Form VI to this effect in the light of two certificates was effected being entry no.830 dated 8th May, 1979. The present respondent no.1 preferred an appeal before the Deputy Collector and Choryashi Prant has decided vide its order No.RTS Appeal No.31 of 1986 dated 31st August, 1988, after the period of seven years. Being aggrieved by the said order dated 31st August, 1988, the petitioners have presented a revision application being Revision Application No.115 of 1988 before the Collector, Surat. The Collector, Surat has dismissed the said revision application on 13th January, 1989 and confirmed the order

of the Deputy Collector passed on 31st August, 1988. Thereafter, the petitioners have filed revision application before the Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad and the said authority has also dismissed the said revision application dated 29th November, 1989. Against the present petition, no any reply has been filed by other respondent no.1 or respondent no.2.

3. Mr.G. R. Shaikh, learned advocate for the petitioners has raised important question that whether the State Government and all the Revenue Officer be permitted to exercise the revisional and or appellate jurisdiction under the provisions of the Code read with rule 108(5) and rule 108(6) of the Bombay Land Revenue Code, after an expiry of more than seven years and in that light a transaction which is irreversible can be set aside. Mr.G. R. Shaikh has relied upon the some of authority of the Apex Court as well as this Court which are as under :-

(i) 10 GLR 992, (ii) 11 GLR 307, (iii) 12 GLR 156, (iv) 17 GLR 464, (v) 25(2) GLR 1225, (vi) 88 GLH 13 U.J. and (vii) 21 GLT 268

and also leading case on the subject pronounced upon by the Apex Court reported in AIR 1969 S.C. 1297 and AIR 1983 S.C. 1239. Mr.Shaikh has also submitted that the petitioner no.2 is an agriculturist and petitioner no.1 is also agriculturist but he is relinquished his share. Apart from this question of the petitioners being agriculturist, the question whether the petitioners are agriculturists or not has but to be decided by the Mamlatdar under the provisions of Tenancy Act. The authority has to examined to decide the question of agriculturist under the provisions of Bombay Tenancy and Agricultural Lands Act. Mr.Shaikh has also submitted that since no record of Special Recovery Officer was available in the office of the Special Recovery Officer, the respondent believed that there was no public auction at all and therefore wrong entry was made and was required to be ractified. According to Mr.Shaikh though record of right is not a document evidencing title to land still entries made therein are accepted and relied upon for proving the root of title to the land and the respondent cannot be permitted to act in casual, callous and arbitrary manner as has been done in the present case. It is also submitted by Mr.Shaikh that neither the erstwhile owner nor the Special Recovery Officer have made any grievance about the auction sale and the purchase transaction. The petitioners have acted upon

the same as bonafide purchaser for value and having acted to their prejudice the respondents are estopped from acting contrary to what they hold out others to believe. Mr.Shaikh has further submitted that Special Recovery Officer was the delegated officer of the Collector for the purpose of auction, and that therefore, the exercise of jurisdiction by the Deputy Collector for the purpose of cancellation of the entry and thereby nullifying the bid in auction and certificate of purchased issued in favour of the petitions is also without jurisdiction. Mr.Shaikh has also submitted that neither the bid nor the certificate of purchased as well as the certificate issued for the purpose of recovery resulting into the auction have not been challenged and consequent thereupon they having become final, the exercise of the jurisdiction in the guise of the cancellation of the entry thereby declaring the purchasers to be the non agriculturists and resulting in depriving their title is thus without jurisdiction. Mr.Shaikh has also submitted that the respondent Maniben is not a guarantor has also never been challenged by her. The sane is also neither disputed nor challenged and consequent thereupon the cancellation of an entry in that light as against the acceptance of the full amount of purchase price by the respondent estoppels her from challenging the entry and the exercise of jurisdiction for the purpose of cancellation of the entry is also without jurisdiction. Mr.Shaikh has relied upon the relevant provision of the Bombay Revenue Code. Section 178, wherein it is provided that "at any time within thirty days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it. But, except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. If the application be allowed, the Collector shall set aside the sale, and direct a fresh one." Therefore, according to Mr.Shaikh, no action or proceedings has been initiated against the petitioner under the relevant provision of section 178 of the Bombay Lands Revenue Act for setting aside the public auction in question. Therefore, the power which has been exercised by the authority in respect to the RTS Appeal No.31 of 1986 filed by the respondent no.1 against the petitioner which has been allowed by the Deputy Collector, Choryasi Prant, Surat and setting aside the entry no.830 dated 8th May, 1979 and, thereafter, the Collector, Surat in Revision Application No.115 of 1988 while exercising the

power under section 108(6) has also rejected. The said revision application filed by the petitioners and ultimately, the Additional Chief Secretary, Revenue Department (Appeals) Ahmedabad has also rejected the revision application submitted by the petitioners. According to Mr.Shaikh, all these authorities have committed errors and not considered the contentions which has been raised by the petitioners. Mr.Shaikh has submitted that the petitioners filed a revision application before the Additional Chief Secretary, Revenue Department (Appeals) Ahmedabad, but the said authority has not appreciated the same and the same rejected the said contentions without given any reason or without given any application of mind. Mr.Shaikh has also submitted that without deciding the main question as to whether the public auction is legal or not. A result thereto, the entry which has been made cannot be examined by the authority in absence of deciding the main question of public auction is legal or not. Therefore, the authority has committed errors in its order, this order are required to be set aside.

4. Mr.Pandya, learned AGP has submitted that all the authorities having come to the concurrent finding which are the findings of the facts. All the authorities have rightly given the conclusion on the basis of the facts on record and, therefore, none of the authorities have committed any errors which found apparently on the face of record which required any interference by this Court by exercising the power under Article 226 and 227 of the Constitution of India.

5. I have heard the learned advocates appearing on behalf of the respective parties. The fact remains that the public auction was held on 8th May, 1979. The present petitioners were the highest bidders and their bid was Rs.66,000/- which was accepted and two certificates dated 8th June, 1979 and 14th July, 1979 have been issued by the Special Recovery Officer regarding the acceptance of the bid and the title of the present petitioners and also regarding the purchase in favour of the present petitioners. In response to these two certificates, the possession was also handed over and delivered to the present petitioners on 23rd May, 1979 and possession receipt was also given on the very same day. In the light of two certificates and possession, the necessary entry was made vide entry no.830 dated 8th May, 1979 and same being certified in due course of law under the provisions of Bombay Lands Revenue Act by the competent authority in Village Form No.VI which was certified on 11th July, 1979. These are undisputed facts

on record. It is also necessary to note that the present respondent no.1 preferred an appeal before the Deputy Collector and Choryashi Prant vide its order No.RTS Appeal No.31 of 1986 dated 31st August, 1988, after the period of seven years that itself is considered to be unreasonable delay by the authority. Such appeal cannot be entertained by the Deputy Collector, Choryasi Prant, Surat, after the period of seven years. If the relevant provisions of rule-108(5) has been examined and considered that such appeal is required to be filed within 60 days from the date on which the copy of the order was served on the appellant or otherwise intimated to him. However, it is proved under the such rule that the appellate authority may after recording his reasons in writing admitted the appeal after the aforesaid period of 60 days if it is satisfied that the appellant has sufficient cause for not appreciating the appeal within such period. I have perused the order passed by the Deputy Collector, Choryasi Prant, Surat, wherein the entry no.830 dated 8th May, 1979 has been challenged by the respondent no.1. By filing an appeal on 6th January, 1986 and in the order of the Deputy Collector no observation has been made or order has been passed by the Deputy Collector to entertain the appeal after the period of seven years, no such order has been passed by the Deputy Collector condoning the delay till the filing the appeal by the respondent no.1, no observation and no reasons have been mentioned by the Deputy Collection in his order. Therefore, the appeal has been entertain by the Deputy Collector though it was delay about seven years but the same is not considered by the Deputy Collector and no order has been passed condoning the such delay which has been occurred whether it has been based upon sufficient cause or no such discussion has been in the order passed by the Deputy Collector, Choryasi Prant. It is also necessary to consider the decision of this court in the case of JANARDAN D. PATEL V/S. STATE OF GUJARAT, reported in 1997 (1) GLR 50 wherein it is observed by this court that power under section 211 of the Gujarat Land Revenue Code and Rule-108 of the Gujarat Land Revenue Code Rules, 1972 are subject to the same limitation as powers of revision under section 211. The powers must be exercised within a reasonable time as laid down in RAGHAVANATHA CASE (SUPRA) (1969) 10 GLR 992 Supreme Court. The Officer exercising the powers under Land Revenue Code cannot aursurp the powers under another enactment. The procedure pointed out as to what should be done in such cases. It is also further observed by this Court that it cannot be gainsaid that the revision powers under the relevant provisions contained in Rule 108(6) of the rules are quite similar to those contained

in section 211 of the Code. What applies to section 211 of the Code would apply with equal force to Rule 108(6) of the Rules. It is further observed that the revenue authorities have no jurisdiction to decide whether or not a transaction is in contravention of any statutory provisions contained in any other enactment and authority having limited jurisdiction cannot obviously expand its jurisdiction nor assume jurisdiction not conferred on it by law. Therefore,while exercising the powers under Rule 108(6) , the authority has no powers to decide the validity of the transaction on the touch stone of the statutory provisions occurring in some other enactment. If any such question arise, the matter should be referred to the authority empowered to deal with under the said other enactments. It may be noted that the revenue authorities with respect to the mutation proceedings in the revenue records popularly known as RTS proceedings are invested with limits powers regarding the maintenance of revenue record for fiscal purposes and making mutation entries therein on certain contingency. its bare perusal clearly goes to show that what is to be inquired is the correctness of the entry in the record of rights and the Registrar of mutation in accordance with law and rules framed that regard. Thus, it becomes clear that the revenue authority exercising the powers with respect to the RTS proceedings are invested with the limited powers. They cannot themselves assume certain powers not conferred on them by law. The appellate authority having limited jurisdiction cannot obviously expand its jurisdiction nor can assume jurisdiction not conferred on it by law.In that view of the matter, it has no power to decide the validity of the transaction on touch stone of the statutory provisions framed in some other enactments. Similar view has been taken by this Court in case of EVER GREEN APARTMENT CO-OPERATIVE HOUSING SOCIETY LTD. V/S. SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT reported in 1991(1) GLR 113. It has alsos been considered by this Court in a case reported in 1997 (1) GLR 50.

6. Repying upon said two decisions of this Court, Mr.Shaikh submitted that notice has been issued by the revenue authorities under Rule 108(6) and, therefore, the validity of the transaction cannot be examined while initiating, the proceedings under Rule 108(6). The sale transaction which has been cancelled by the Deputy Collector, while observing for the said proceedings public auction has been in favour of non-agriculturists and, therefore, it violated under the provisions of section 2(6), read with section 63 of the Tenancy Act is beyond the jurisdiction.

7. It is also necessary to consider that the Collector, Choryasi Prant has come to the conclusion that public auction in favour of non-agriculturists violated under section 63 of the Tenancy Act. Such finding beyond the jurisdiction of the Deputy Collector, while exercising as appellate authority under the rule 108 of the Code. Similarly, the Collector has also come to the same conclusion that in the order dated 13th January 1989 and also come to the conclusion that such public auction in favour of the petitioner violated under section 2(6) and section 63 of the Tenancy Act and also come to the conclusion that the order of public auction in favour of petitioner is also illegal and required to be set aside. Such conclusion of the Collector, Choryasi Prant is apparently contrary to the provisions of Rule-108(6) of the Bombay Land Revenue Act and such Collector has no power, while exercising the revisional power under Rule 108(6). He has no jurisdiction to set aside the public auction and such power is with the Collector, while exercising the powers under section 178 of the Bombay Land Revenue Code for which within one month, a necessary application is required to be filed by the aggrieved party. Therefore, the order passed by the Collector is also illegal and without jurisdiction. Similarly, Additional Chief Secretary (Appeals) Revenue Departments has also committed the very same errors rejecting the revision application filed by the petitioner and coming to the conclusion that the public auction itself is illegal and there was same irregularities committed by the petitioners and the petitioners are not agriculturists and, therefore, confirming both the orders of Deputy Collector as well as the Collector on the same line and therefore, according to my opinion, all the orders of appellate authorities i.e. Deputy Collector and the Collector and Additional Chief Secretary (Appeals) Revenue Departments are without jurisdiction.

8. In respect of the contentions which has been raised by Mr.Shaikh, learned advocate for the petitioners about unreasonable delay in filing of appeal before the Deputy Collector. The view taken by this Court as well as Apex Court, in the case of EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD V/S. SPECIAL SECRETARY, REVENUE DEPARTMENT, GOVT OF GUJARAT reported in 1991 (1) GLR 113. In case of PARSHOTTAM RAMAJI RATHOD V/S. D.D. MISTRY reported in 1999 (2) GLH 310 and so also in case of SHREE RAVINDRASHAN COOPERATIVE HOUSING SOCIETY V/S. P. THAKKER reported in 2000(2) GLR 1639 and in the case of MOHAMAD KAVI MOHAMAD AMIN V/S. FATMABAI IBRAHIM reported in (1997) 6 SCC Supreme Court Cases page 71. In case of KESHAVLAL A. MANTAR V/S. DY. COLLECTOR in

Special Civil Application No.2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI V/S. STATE OF GUJARAT delivered in Special Civil Application No.1778 of 1987 [Coram : D.M.Dharmadhikari, CJ.] on 3rd March, 2000.

9. I have considered the various authorities cited by the learned advocate Mr.Shaikh. Observations of the Apex Court in case of MANCHHARAM V/S. SP PATHAK AND OTHERS in Civil Appeal No.1262 (N) of 1978 decided on 28th September, 1983, it has been observed that;

> "Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within as reasonable time. This is too well established to need buttressing by precedent. however, one is readily available in State of Gujarat Vs. Patel Raghav Natha and others (1970) 1 SCR 335".

10. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities under Section 84-C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo motu power under section 84-C, not exercised within reasonable time.

11. In view of the above decisions all these Courts as well as Apex Court and considering the fact that the revenue authorities like exercising the powers under the Bombay Land Revenue Code as set aside the transaction which is beyond scope and jurisdiction of the provision of Rule-108 of Bombay Land Revenue Code. Therefore, the order passed by the Deputy Collector, Choryasi Prant in Appeal No.31 of 1986 dated 31st August, 1988 and the order passed by the Collector in Revision Application No.115 of 1988 dated 13th January, 1989 and the order passed by Additional Chief Secretary (Appeals) Revenue Department dated 29th November, 1989 are required to be set aside, as these orders are without jurisdiction. And on the contrary to the provisions of Bombay Land Revenue Code and Rules and, therefore all these three orders are required to be set aside and hereby quashed. The present petition is allowed. Rule is made absolute. No order as to costs.

(H. K. Rathod,J.)

(vijay)